

IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF MISSISSIPPI
EASTERN DIVISION

LEFLORIS LYON

PLAINTIFF

V.

CIVIL ACTION NO. 4:10cv185-DPJ-FKB

CANADIAN NATIONAL RAILWAY CO., ET AL.

DEFENDANTS

REPORT AND RECOMMENDATION OF
UNITED STATES MAGISTRATE JUDGE

The plaintiff has filed an Application to Proceed in District Court Without Prepaying Fees or Costs in this case. (Docket No. 11) Plaintiff has already paid the filing fee of \$350.00 to initiate this action, but states in an "Emergency Motion for Relief" (Docket No. 12) that he makes the request to proceed *in forma pauperis* so that the United States Marshal will be ordered to serve process in the case.

After review of the sworn Financial Affidavit filed with this Court, it is the opinion of the Magistrate Judge that the plaintiff is not indigent and should not be allowed to proceed *in forma pauperis*. Plaintiff has significant funds in savings and an IRA account, as well as a monthly, albeit small, source of income. Moreover, his debts and financial obligations were specific as to some expenses (medical), but were non-specific and did not list to whom they were payable as to other expenses ("estimated resident repairs," "estimated credit card fees"). Furthermore, the undersigned, pursuant to the discretion accorded to the Court, has determined that the circumstances of this case do not warrant burdening the resources of the Marshal Service with service of process in this case. Pursuant to Rule 4(c) of the Federal Rules of Civil Procedure, "[a]ny person who is at least 18 years old and not a party may serve a summons and complaint." Considering the Plaintiff's legal experience, as detailed in his complaint and subsequent filings,

the undersigned finds that the Plaintiff is capable of finding a person who will accomplish service at a reasonable cost.

For the reasons stated above, the undersigned recommends that the plaintiff's Application to Proceed in District Court Without Prepaying Fees or Costs be **denied**.

Parties are hereby notified that failure to file written objections to the proposed findings, conclusions and recommendations within fourteen (14) days after being served with a copy of the Report and Recommendation shall bar that party, except upon grounds of plain error, from attacking on appeal the unobjected-to proposed factual findings and legal conclusions accepted by the district court. Douglass v. United Services Automobile Ass'n, 79 F.3d 1415 (5th Cir. 1996)(en banc).

Respectfully submitted, this the 17th day of November, 2010.

___/s/ F. Keith Ball_____
UNITED STATES MAGISTRATE JUDGE